



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FF09E21000 FXES1111090FEDR 223]

Endangered and Threatened Wildlife and Plants; 90-Day Findings for Three Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notification of petition findings and initiation of status reviews.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce 90-day findings on three petitions to add species to the Lists of Endangered and Threatened Wildlife and Plants under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that the petitions to list the thick-leaf bladderpod (*Physaria pachyphylla*) and variable cuckoo bumble bee (*Bombus variabilis*) present substantial scientific or commercial information indicating that the petitioned actions may be warranted. Therefore, with the publication of this document, we announce that we are initiating status reviews of these species to determine whether the petitioned actions are warranted. To ensure that the status reviews are comprehensive, we request scientific and commercial data and other information regarding the species and factors that may affect their status. Based on the status reviews, we will issue 12-month petition findings, which will address whether or not the petitioned actions are warranted, in accordance with the Act. We further find that the petition to recognize the Texas population of the ocelot (*Leopardus pardalis*) as a distinct population segment (DPS) and to list that DPS does not present substantial scientific or commercial information indicating the petitioned action may be warranted. Therefore, we are not initiating a status review of the Texas ocelot population.

DATES: These findings were made on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. As we commence our status reviews, we seek any new information concerning the status of, or threats to, the thick-leaf bladderpod or variable cuckoo bumble bee,

or their habitats. Any information we receive during the course of our status reviews will be considered.

ADDRESSES: *Supporting documents:* Summaries of the basis for the petition findings contained in this document are available on <https://www.regulations.gov> under the appropriate docket number (see tables under **SUPPLEMENTARY INFORMATION**). In addition, this supporting information is available by contacting the appropriate person, as specified in **FOR FURTHER INFORMATION CONTACT**.

Status reviews: If you have new scientific or commercial data or other information concerning the status of, or threats to, the thick-leaf bladderpod or variable cuckoo bumble bee, or their habitats, please provide those data or information by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Search box, enter the appropriate docket number (see Table 1 under **SUPPLEMENTARY INFORMATION**). Then, click on the “Search” button. After finding the correct document, you may submit information by clicking on “Comment.” If your information will fit in the provided comment box, please use this feature of <https://www.regulations.gov>, as it is most compatible with our information review procedures. If you attach your information as a separate document, our preferred file format is Microsoft Word. If you attach multiple comments (such as form letters), our preferred format is a spreadsheet in Microsoft Excel.

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: [Insert appropriate docket number; see Table 1 under **SUPPLEMENTARY INFORMATION**], U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send information only by the methods described above. We will post all information we receive on <https://www.regulations.gov>. This generally means that we will post any personal information you provide us (see *Information Submitted for a Status Review*, below).

FOR FURTHER INFORMATION CONTACT:

Species common name	Contact person
Thick-leaf bladderpod	Ben Conard, Deputy Project Leader, Montana Ecological Services Field Office, 406-758-6882, Ben_Conard@fws.gov
Variable cuckoo bumble bee	Louise Clemency, Field Supervisor, Chicago Ecological Services Field Office, 312-485-9337, Louise_Clemency@fws.gov
Texas population of ocelot	Hilary Swarts, Wildlife Biologist, Laguna Atascosa National Wildlife Refuge, 956-748-3607, Hilary_Swarts@fws.gov

If you use a telecommunications device for the deaf, please call the Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations in title 50 of the Code of Federal Regulations (50 CFR part 424) set forth the procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants (Lists or List) in 50 CFR part 17. Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to add a species to the List (i.e., “list” a species), remove a species from the List (i.e., “delist” a species), or change a listed species’ status from endangered to threatened or from threatened to endangered (i.e., “reclassify” a species) presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish the finding promptly in the *Federal Register*.

Our regulations establish that substantial scientific or commercial information with regard to a 90-day petition finding refers to credible scientific or commercial information in support of the petition’s claims such that a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted (50 CFR 424.14(h)(1)(i)).

A species may be determined to be an endangered species or a threatened species because of one or more of the five factors described in section 4(a)(1) of the Act (16 U.S.C. 1533(a)(1)).

The five factors are:

- (a) The present or threatened destruction, modification, or curtailment of its habitat or range (Factor A);
- (b) Overutilization for commercial, recreational, scientific, or educational purposes (Factor B);
- (c) Disease or predation (Factor C);
- (d) The inadequacy of existing regulatory mechanisms (Factor D); and
- (e) Other natural or manmade factors affecting its continued existence (Factor E).

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term “threat” to refer in general to actions or conditions that are known to, or are reasonably likely to, affect individuals of a species negatively. The term “threat” includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term “threat” may encompass—either together or separately—the source of the action or condition, or the action or condition itself. However, the mere identification of any threat(s) may not be sufficient to compel a finding that the information in the petition is substantial information indicating that the petitioned action may be warranted. The information presented in the petition must include evidence sufficient to suggest that these threats may be affecting the species to the point that the species may meet the definition of an endangered species or threatened species under the Act.

If we find that a petition presents such information, our subsequent status review will evaluate all identified threats by considering the individual-, population-, and species-level effects and the expected response by the species. We will evaluate individual threats and their expected effects on the species, then analyze the cumulative effect of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that are expected to have positive effects on the species—such as any existing regulatory mechanisms or conservation efforts that may ameliorate threats. It is only after conducting this cumulative analysis of threats and the actions that may ameliorate them, and the expected effect on the species now and in the foreseeable future, that we can determine whether the species meets the definition of an endangered species or threatened species under the Act. If we find that a petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, the Act requires that we promptly commence a review of the status of the species, and we will subsequently complete a status review in accordance with our prioritization methodology for 12-month findings (81 FR 49248; July 27, 2016).

We note that designating critical habitat is not a petitionable action under the Act. Petitions to designate critical habitat (for species without existing critical habitat) are reviewed under the Administrative Procedure Act and are not addressed in this finding (see 50 CFR 424.14(j)). To the maximum extent prudent and determinable, any proposed critical habitat will be addressed concurrently with a proposed rule to list a species, if applicable.

Summaries of Petition Findings

The petition findings contained in this document are listed in the tables below, and the basis for each finding, along with supporting information, is available on <https://www.regulations.gov> under the appropriate docket number.

Table 1. Status reviews.

Common Name	Docket Number	URL to Docket on https://www.regulations.gov
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Thick-leaf bladderpod	FWS-R6-ES-2021-0117	https://www.regulations.gov/docket/FWS-R6-ES-2021-0117
Variable cuckoo bumble bee	FWS-R3-ES-2021-0118	https://www.regulations.gov/docket/FWS-R3-ES-2021-0118

Table 2. Not-substantial petition finding.

Common Name	Docket Number	URL to Docket on https://www.regulations.gov
Texas population of ocelot	FWS-R2-ES-2021-0119	https://www.regulations.gov/docket/FWS-R2-ES-2021-0119

Evaluation of a Petition to List the Thick-leaf Bladderpod

Species and Range

Thick-leaf bladderpod (*Physaria pachyphylla*); Montana and Wyoming.

Petition History

On March 11, 2021, we received a petition from the Center for Biological Diversity, Montana Native Plant Society, and Pryors Coalition, requesting that the thick-leaf bladderpod be listed as an endangered species or a threatened species and critical habitat be designated for this species under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(c). This finding addresses the petition.

Evaluation of Information

The petitioners state that a gypsum exploration project is proposed in the Pryor Foothills Research Natural Area (RNA)/Area of Critical Environmental Concern (ACEC) within the largest documented subpopulation of the thick-leaf bladderpod. If the proposed exploration project occurs, these activities may result in unavoidable impacts to thick-leaf bladderpod populations through habitat loss and modification, invasive species introduction, and direct mortality, and upgrades to access roads in the project area will have potential impacts to thick-leaf bladderpod individuals and habitat. In 2015, the Pryor Foothills RNA/ACEC was recommended for withdrawal from all locatable mineral entry; however, the withdrawal has not

occurred. If the proposed exploration finds marketable gypsum, then further gypsum mining is foreseeable. The proposed project is currently under review by the Bureau of Land Management.

Finding

We reviewed the petition, sources cited in the petition, and other readily available information. Based on our review of the petition and readily available information regarding gypsum mining exploration (Factor A), we find that the petition presents substantial scientific or commercial information indicating that listing the thick-leaf bladderpod as an endangered or threatened species may be warranted. The petitioners also presented information suggesting off-road vehicle use may be a threat to the thick-leaf bladderpod. We will fully evaluate ORV use and other potential threats during our 12-month status review, pursuant to the Act's requirement to review the best available scientific information when making that finding.

The basis for our finding on this petition and other information regarding our review of the petition can be found as an appendix at <https://www.regulations.gov> under Docket No. FWS–R6–ES–2021–0117 under the Supporting Documents section.

Evaluation of a Petition to List Variable Cuckoo Bumble Bee

Species and Range

Variable cuckoo bumble bee (*Bombus variabilis*); Alabama, Arizona, Arkansas, California, Delaware, Colorado, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, West Virginia; Canada (Ontario); and Mexico.

Petition History

On May 17, 2021, we received a petition from the Center for Biological Diversity requesting that the variable cuckoo bumble bee be listed as an endangered species and critical habitat be designated for this species under the Act. The petition clearly identified itself as such

and included the requisite identification information for the petitioner, required at 50 CFR 424.14(c). This finding addresses the petition.

Evaluation of Information

The petitioner provided credible information indicating potential threats to the variable cuckoo bumble bee within multiple populations across its range due to the loss of the host species, the American bumble bee (*Bombus pensylvanicus*), which supports the feeding and nesting of variable cuckoo bumble bees (Factor E). The petitioner also provided credible information that the existing regulatory mechanisms may be inadequate to address these potential threats (Factor D).

Finding

We reviewed the petition and sources cited in the petition. We considered the factors under section 4(a)(1) and assessed the effect that the threats identified within the factors—as may be ameliorated or exacerbated by any existing regulatory mechanisms or conservation efforts—may have on the species now and in the foreseeable future. Based on our review of the petition regarding the loss of the host species (Factor E), we find that the petition presents substantial scientific or commercial information indicating that listing the variable cuckoo bumble bee as an endangered or threatened species may be warranted. The petitioner also presented information suggesting habitat destruction from agricultural intensification, livestock grazing, and pesticide use; pathogen spillover; loss of genetic diversity; and climate change may be threats to the variable cuckoo bumble bee. We will fully evaluate these potential threats during our 12-month status review, pursuant to the Act’s requirement to review the best scientific and commercial information available when making that finding.

The basis for our finding on this petition and other information regarding our review of the petition can be found as an appendix at <https://www.regulations.gov> under Docket No. FWS–R3–ES–2021–0118 under the Supporting Documents section.

Evaluation of a Petition to List the Texas Population of Ocelot

Species and Range

Ocelot (*Leopardus pardalis*); Texas, Arizona, Argentina, Belize, Bolivia, Brazil, Colombia, Costa Rica, Ecuador, El Salvador, French Guiana, Guatemala, Guyana, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad and Tobago, Uruguay, Venezuela.

Petition History

Ocelots have been listed as an endangered species rangewide under the Act since 1972 (37 FR 6476; March 30, 1972), which includes where they are found in Arizona and Texas (47 FR 31670; July 21, 1982). On March 30, 2021, we received a petition from WildEarth Guardians dated February 2, 2021, requesting that the Texas population of ocelots be classified as a distinct population segment (DPS) and listed as an endangered species or a threatened species under the Act. The petition also requested designation of critical habitat for the Texas population of ocelots. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(c). This finding addresses the petition.

Evaluation of Information

We evaluated information provided in the petition to determine if the petition identified an entity that may be eligible for listing as a DPS under the Service's Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act (DPS policy) (61 FR 4722; February 7, 1996). Our evaluation concluded that the petition did not provide substantial information that the Texas population of ocelots may meet the significance criteria of our DPS policy. Therefore, we did not further evaluate whether the petition presents substantial information indicating that the petitioned action may be warranted.

Finding

Based on our review of the petition and sources cited in the petition, we find that the petition does not present substantial scientific or commercial information indicating the petitioned action may be warranted for the ocelot. The petition from WildEarth Guardians

requests designation of the ocelot populations in Texas as a DPS. Under the Service's DPS policy, the elements for listing a DPS are that the population is both discrete and significant and meets the definition of an endangered species or threatened species (61 FR 4722; February 7, 1996). The petition presents substantial information that Texas ocelots may meet both elements of discreteness as defined by the DPS policy, due to (1) marked separation as evidenced by extensive development along the border and little to no genetic exchange between ocelots in Texas and Mexico and (2) differences in control of exploitation and regulatory mechanisms to protect the species between the United States and Mexico. However, the petition does not present substantial scientific or commercial information explicitly related to the significance of Texas ocelots relative to the taxon. Furthermore, information available in our files refutes the claims made in the petition. We find that the ecological setting in which Texas ocelots occur is not unique and, therefore, Texas ocelots do not persist in a unique ecological setting compared to the rest of the taxon. In addition, we find that the loss of the Texas ocelot populations would not represent a significant gap in the species' range. Thus, after reviewing the information presented in the petition, we determined that the petition does not present substantial information indicating that the ocelot population in Texas may meet the significance element to be a Distinct Population Segment.

Because the petition does not present substantial information indicating that the Texas ocelot population meets the standard of a DPS, we are not initiating a status review of this species in response to this petition. However, we ask that the public submit to us any new information that becomes available concerning the status of, or threats to, this species or its habitat at any time (see appropriate contact under **FOR FURTHER INFORMATION CONTACT** above).

The basis for our finding on this petition, and other information regarding our review of the petition, can be found as an appendix at [https:// www.regulations.gov](https://www.regulations.gov) under Docket No. FWS-R2-ES-2021-0119 under the Supporting Documents section.

Conclusion

On the basis of our evaluation of the information presented in the petitions under sections 4(b)(3)(A) of the Act, we have determined that the petitions summarized above for the thick-leaf bladderpod and variable cuckoo bumble bee present substantial scientific or commercial information indicating that the petitioned actions may be warranted. We are, therefore, initiating status reviews of these species to determine whether the actions are warranted under the Act. At the conclusion of the status reviews, we will issue findings, in accordance with section 4(b)(3)(B) of the Act, as to whether the petitioned actions are not warranted, warranted, or warranted but precluded by pending proposals to determine whether any species is an endangered species or a threatened species. In addition, we have determined that the petition summarized above for the Texas population of ocelots does not present substantial scientific or commercial information indicating that the petitioned entity may qualify as a DPS. Therefore, it is not a listable entity under the Act. We are, therefore, not initiating a status review of this species in response to the petition.

Authors

The primary authors of this document are staff members of the Ecological Services Program, U.S. Fish and Wildlife Service.

Authority

The authority for these actions is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Martha Williams,
Principal Deputy Director,
Exercising the Delegated Authority of the Director,
U.S. Fish and Wildlife Service.